

The Honorable Thomas T. Glover  
Chapter 11

Hearing Place: Seattle, Courtroom 7106  
Hearing Date: January 23, 2009, 9:30 a.m.  
Response Date: January 16, 2009

UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

WESCOLD, INC.,

Debtor.

NO. 08-14902

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW RE MOTION TO (1) SELL  
SUBSTANTIALLY ALL OF DEBTOR'S  
ASSETS, ETC.

THIS MATTER having come before the Court on the Motion to (1) Sell Substantially All of Debtor's Assets, (2) Authorize Assumption and Assignment of Ervin Lease and Viewpoint License and Rejection of Any Other Executory Contracts and Unexpired Leases , and (3) Extend Time to Assume or Reject Unexpired Lease of Nonresidential Real Property (the "Motion") filed by Wescold, Inc., the debtor and debtor in possession herein (the "Debtor"); the Court having conducted a hearing on the Motion on January 23, 2009 (the "Hearing"); and the Court having granted the Motion pursuant to an order set forth in a separate document; NOW, THEREFORE, the Court hereby finds and concludes as follows:

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FINDINGS OF FACT AND CONCLUSIONS OF  
LAW RE MOTION TO (1) SELL  
SUBSTANTIALLY ALL OF DEBTOR'S ASSETS,  
ETC.- 1

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1           1.       The Debtor provided adequate notice of the hearing on the Motion as set forth in  
2 the proofs of service on file with the Court (the "Notice").

3           2.       Any objections to the Motion and the adequacy of the Notice have been either  
4 withdrawn or overruled.

5           3.       The Court considered the Motion, the Declaration of Greg Sangster (the "Sangster  
6 Declaration") as Chief Restructuring Officer of the Debtor, the argument of counsel, and the files  
7 and records herein.

8           4.       The Court has jurisdiction to hear and determine the Motion and all related  
9 matters pursuant to 28 U.S.C. §§ 1334 and 157. Venue of this case and proceeding in this  
10 district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding  
11 pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (D), (M), (N), and (O). The statutory predicates for  
12 the relief granted herein are 11 U.S.C. §§ 105, 363, and 365, as supplemented by Federal Rules  
13 of Bankruptcy Procedure 2002, 4001, 6004, 6006, and 9007.

14           5.       Notice of the Motion and of the Hearing thereon was timely and properly given in  
15 compliance with 11 U.S.C. §§ 102(1), 363(b) and (f), and 365, Federal Rules of Bankruptcy  
16 Procedure 4001, 6004, and 6006, and applicable local Bankruptcy Rules and was reasonable and  
17 appropriate under the circumstances. A reasonable opportunity to be heard was afforded to all  
18 interested parties and creditors.  
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1           6.       The Debtor has demonstrated that the sale of the Acquired Assets (as defined in  
2 the Asset Purchase and Sale Agreement (the "Agreement") attached hereto as Exhibit A)<sup>1</sup> to the  
3 Buyer, pursuant to the Agreement, is based on sound business justifications, and such sale is in  
4 the best interests of the Debtor's estate for the reasons set forth in the Motion, the Sangster  
5 Declaration, and on the record at the hearing. Failure to approve the Motion will cause  
6 irreparable harm to the Debtor, its creditors, and its estate.

7           7.       The sale of the Acquired Assets pursuant to the Agreement has been proposed  
8 and, if consummated, will have been consummated in good faith in accordance with 11 U.S.C. §  
9 363(m). The Buyer is a good faith purchaser and is entitled to the protections afforded under 11  
10 U.S.C. § 363(m). There was no collusion in the Purchase Price and no violation of 11 U.S.C. §  
11 363(n). The Buyer is not an insider or affiliate of the Debtor.

12           8.       The Debtor has demonstrated sufficient justification to sell the Acquired Assets  
13 and to effect the sale other than under a plan of reorganization and pursuant to a disclosure  
14 statement. Before and after the Petition Date, the Debtor has been actively attempting to market  
15 its assets. Multiple interested parties were identified. The Debtor's management negotiated with  
16 numerous prospective purchasers. No other parties were found with the resources to accomplish  
17 the Transaction within the time needed. The Buyer is the only prospective purchaser that put  
18 together an offer.  
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23 <sup>1</sup> Capitalized terms used and not defined herein have the meanings set forth in the Motion or the Agreement and are incorporated herein by this reference, unless otherwise set forth herein.


1           9.       The consideration to be received by the Debtor from the Buyer is fair and  
2 reasonable, and the sale does not unfairly benefit insiders, a proprietary purchaser, or any  
3 creditor or class of creditors. The "Purchase Price" as defined in the Agreement shall be  
4 \$265,000.00.

5           10.      Consummation of the Agreement is in the best interests of the Debtor, its estate,  
6 all creditors, and other parties in interest.

7           11.      The Software License and the Ervin Lease (as defined in the Motion) will be  
8 essential to the value of the Acquired Assets. Executory contracts and expired leases not  
9 assumed and assigned to the Buyer will be burdensome to the estate. There is cause for an  
10 extension of time to assume or reject the Youngren Lease.

11           12.      Either all entities having an interest in the Acquired Assets have consented to the  
12 sale thereof to the Buyer pursuant to 11 U.S.C. § 363(f)(2), or entities not consenting could be  
13 compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest  
14 pursuant to 11 U.S.C. § 363(f)(5) and RCW 7.60.260(2). Such consent requires disbursement of  
15 (a) \$50,000.00 of the Purchase Price free and clear of any interests of Wells Fargo Bank, N.A. to  
16 the Escrow Agent in trust for the benefit of the Debtor's estate subject to further order of this  
17 Court and (b) the remainder to Wells Fargo Bank, N.A.

18           DATED this 23<sup>rd</sup> day of January, 2009.

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Thomas T. Glover  
United States Bankruptcy Judge  
(Dated as of "Entered on Docket" date above)

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4  
5 /s/ John R. Knapp, Jr.

6 John R. Knapp, Jr., WSBA No. 29343

7 Attorneys for Debtor Wescold, Inc.

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